

# ALSTON & BIRD LLP

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June 12, 2006

VIA HAND DELIVERY

Hon. Kenneth M. Karas  
United States District Courthouse  
500 Pearl Street, Room 920  
New York, New York 10007-1312

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 6/13/06
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**MEMO ENDORSED**

Re: Advanced Magazine Publishers, Inc. v. Activ8now et al., No. 05 CV 7516 (KMK)(DFE)

Dear Judge Karas:

We represent Counterclaim Defendant RichFX, Inc. ("RichFX") in the referenced action. We write to seek leave from the Court to file the exhibits to RichFX's Markman submission in hard copy.

The exhibits to RichFX's Markman submission include the file histories for U.S. Patent Nos. 6,535,889 and 6,557,006 (the "patents-in-suit"), and other information which is critical to the Court's construction of the disputed claim terms. The file histories of the patents-in-suit each consist of close to 200 pages.

We believe that the file histories of the patents-in-suit are critical for construction of the disputed claim terms, in accordance with the Federal Circuit's controlling *Phillips* decision.<sup>1</sup> None of the other parties in this action have submitted the file histories as part of their respective Markman submissions.

However, after consultation with the ECF Help Desk, we are informed that the ECF system is technologically unable to accommodate the exhibits to RichFX's Markman submission, even if broken up into smaller subparts. The ECF Help Desk instructed us to seek leave of the Court to file these exhibits in hard copy.

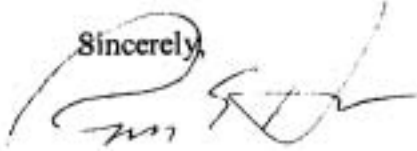
We therefore respectfully request leave of the Court to file the exhibits to RichFX's Markman submission in hard copy. In addition, if the Court wishes, we can

<sup>1</sup> *Phillips v. AWH Corp.*, 363 F.3d 1207 (Fed. Cir. 2004)

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also provide the Court (and the other parties) with the exhibits in electronic format on a CD-ROM.

Sincerely,



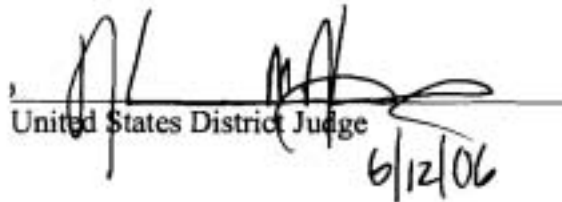
Robert E. Hanlon

cc: All Counsel of Record (by facsimile)

NYC01/7834250v1

*Paper copies of Richix's Markman exhibits  
may be filed.*

So Ordered

  
United States District Judge  
6/12/06

**SO ORDERED**

**KENNETH M. KARAS U.S.D.J.**